TEXAS DEPARTMENT OF HEALTH POLICY BRIEF

CURRENT PUBLIC HEALTH POLICY RESEARCH AND ITS IMPLICATIONS FOR TEXAS

VOLUME I, ISSUE II, 1996

TOBACCO ADVERTISING & YOUTH

Issue

Tobacco advertising may be affecting the health status of our youth: what is the state's role?

Risks and costs

Cigarette smoking is the single most preventable cause of premature death in both the nation and the state. More than 400,000 Americans die each year from tobacco use (CDC 1993a) due to related health problems such as cancer, respiratory illnesses and heart disease. In Texas, the number of deaths due to smoking continues to increase, dwarfing all other causes. The nearly 26,000 estimated deaths in 1990 far exceeded the combined number of deaths caused by auto accidents, homicides, AIDS, alcohol, fire and the use of cocaine, crack, heroin and morphineestimated at less than 9,500 in 1991 (Huang and Kohout 1996). One in five deaths in both the nation and the state is smoking-related (CDC 1993a).

The national cost of diseases related to smoking has been conservatively estimated at \$22 billion for health care; indirect costs for lost productivity and earnings from excess morbidity, disability, and premature death have been estimated at more than \$43 billion (USDHHS 1990). More recent estimates have placed health-care costs of smoking at a minimum of \$50 billion (FDA 1995): \$26.9 billion for hospital costs, \$15.5

billion for doctors, \$4.9 billion in nursing home costs, \$1.8 billion for prescription drugs, and \$900 million for home health-care expeditures. Health-related costs attributable to smoking in Texas during 1993 have been estimated at nearly \$5 billion for adults 35 years and older. This includes both the direct health-care costs resulting from treatments for disease and the indirect costs associated with mortality and morbidity (Huang and Kohout 1996).

Yet tobacco is a legal product. Some 50 million Americans smoke, and another six million use smokeless tobacco products (Federal Register 1995). In 1994, Texas had and estimated 2.6 million smokers 18 years and older (Huang and Kohout 1996). More than three million American adolescents smoke, and another one million adolescent males use smokeless tobacco (USDHHS 1994). In 1991, nearly 203,000 12-to 18-year-olds in Texas smoked (Cummings et al. 1994). In 1994, 55 percent of all secondary students reported having used some type of tobacco product during their lifetimes (TCADA 1995).

Legislative controls

In 1965, Congress passed a labeling provision which preempted state regulation of the advertising or promotion of cigarettes that conformed with the federal labeling requirements (FCLAA). This provision, originally temporary, was made permanent in the next warning label act of 1971 (White 1988). Nonetheless, many states and localities have implemented restrictions on

children's exposure to tobacco advertising, particularly near schools and in other places where children's exposure is high. A recent legal challenge to a Baltimore, Maryland ban on billboard advertising in areas with high exposure to minors was decided in favor of the ban (CDC 1995). In 1992, the Synar Amendment began requiring states to enact and enforce laws restricting the sale of cigarettes to persons under the age of 18 or risk losing federal block-grant money for substance abuse programs. In August 1995, the Food and Drug Administration (FDA) published a finding that nicotine in cigarettes and smokeless tobacco is a drug and, consequently, falls within FDA jurisdiction. In August 1996, President Bill Clinton announced new restrictions on the sale and advertising of tobacco that reaches children and youth; he also assigned tobacco regulation to the FDA by classifying cigarettes as a delivery system of the drug nicotine. These recent changes could likely face three considerable challenges to their implementation: litigation, tort legislation and/or a Congressional block.

All states prohibit the sale and distribution of tobacco products to minors. In Texas (Health and Safety Code, Title 2, 161.081), it is illegal to sell tobacco products to persons younger than 18 years of age. Infractions are Class C misdemeanors and punishable by fines of up to \$500. Nine states (California, Illinois, Kentucky, Louisiana, Michigan, Pennsylvania, Texas, Utah and West Virginia) restrict advertising of tobacco products (CDC 1995). In Texas, it is prohibited for outside signs to advertise tobacco products within 500 feet of churches and private or public elementary or secondary schools (Art. 6674v-3a). This restriction does *not* apply to most sporting and/or entertainment facilities such as stadiums or arenas. All states tax cigarettes; 42 states (including Texas) also tax chewing tobacco and snuff. The average excise tax is 31.5 cents per pack; Texas levies a tax of 41 cents per pack (effective 1990.) Tobacco purchase, possession or use by minors is *not* prohibited. Texas does not restrict youth access to tobacco

products through vending machines, *nor* does it require a retail licensing fee for sales of tobacco products (CDC 1995).

In 1993, the Texas Department of Health (TDH) conducted a study in the Austin metropolitan area to gauge minors' access to tobacco products. Of 94 attempts to purchase cigarettes, 59 (62.8%) were successful. Of 71 attempts to buy smokeless tobacco products, 42 (59.2%) were successful. The presence of warning signs did not affect minors' success in purchasing cigarettes (CDC 1993b). Also in 1993, TDH conducted a study in the Arlington area to gauge minors' access to cigarettes through vending machines. Of 42 attempts, 41 were successful (CDC 1994b).

Children as "consumers in training"

According to a 1989 Surgeon General's report, "as long as children and adolescents continue to find reasons to use tobacco, replacements will be recruited for at least some of the smokers who quit or who die prematurely" (Windom and Mason 1989, ii).

Approximately 90 percent of all tobacco use begins among persons aged 18 and younger (CDC 1996). The data suggest that anyone who does not begin smoking in childhood or adolescence is unlikely to ever begin (USDHHS 1994). Yet despite laws prohibiting the sale of tobacco products to minors in all states, most minors are still able to purchase them. Every day, another 3,000 young people become regular smokers (Federal Register 1995).

Young people begin to smoke because of psychosocial and environmental influences, particularly peer influences, psychological factors and advertising (Benowitz and Henningfield 1994). Indeed, tobacco marketing may be a stronger influence in encouraging adolescents to begin smoking than exposure to peers or family smokers or other sociodemographic variables (Evans et al. 1995). A recent study found that teenagers are roughly three times more receptive than

adults to cigarette ads and that brand choices among teenagers are significantly related to cigarette advertising (Pollay et al. 1996). These findings are consistent with previous research that has found: greater advertising sensitivity among the young (CDC 1992, 1994a); that "adolescents are more susceptable to tobacco advertising than are adults" (Rombouts and Fauconnier 1988, p.308); and that cigarette advertising influences young people's perceptions of the pervasiveness, image and function of smoking (USDHHS 1994), all psychosocial risk factors.

In 1988 — the first full year of the R.J. Reynolds "Joe Camel" advertising campaign — smoking by youth rose after a 15-year decline (Borio 1995). In 1990, DiFranza found that the Joe Camel campaign had increased its under-18 market share from 0.5 percent to 32.8 percent since the campaign's 1987 inception. A 1991 study found that six-year-old children identified Joe Camel as easily as they did Mickey Mouse (Fisher et al.).

Traditionally, the tobacco industry insists that "kids just don't pay attention to cigarette ads... [our advertising] purpose is to get smokers of competitive products to switch...[which is] virtually the only way a cigarette brand can meaningfully increase its business" (RJR 1984, p.89). Yet a clear majority of adolescent smokers (approximately 85%) prefer the three most heavily advertised cigarette brands —Marlboro, Camel and Newport —compared to 35 percent of the adult market (CDC 1994a).

Summary

Numerous studies have demonstrated that youth are influenced by tobacco advertising and that a clear majority of smokers begin before the age of 18. Although it is unlikely that a six-year-old child who is strongly attracted to the Joe Camel cartoon character will become a smoker within a year, there is justifiable concern that a child who associates positive images with cigarettes will

become a smoker before the age of 18. In other words, if the perceptions, attitudes and beliefs governing brand *choice* are influenced by cigarette advertising, it seems likely that those same brand perceptions, attitudes and beliefs will influence *consumption* as well.

Given the strong epidemiologic evidence that associates smoking with causes of morbidity and mortality as well as the related escalating costs, the state has a strong health and fiscal interest in reducing smoking, much as it protects the public by requiring the use of seat belts to reduce vehicle mortalities and warning against the effects of excessive consumption of alcohol. More specifically, if advertising influences tobacco use among a consumer group to whom selling tobacco is illegal, the state has a legitimate interest in regulating or restricting that advertising. Targeting children with tobacco advertisements would simply be unlawful and "commercial speech" would not constitute a legal defense. Nor would the "free market of ideas" vision of commercial free speech — which considers individuals to be free agents able to assess commercial as well as health messages and make decisions in their own interests (Gostin 1993) — apply to minors.

Different states have addressed this issue in various ways, minding the health issues while concentrating on appropriate legal and/or legislative steps. Some states have tried to meet the preemptive federal advertising test by focussing on the *deterrence of illegal sales to minors*. Other states have focussed on the *placement* rather than *content* of ads. Attorney Donald W. Garner (1996) favors the latter approach, specifically regarding billboards, as "states and municipalities command broad authority to protect children and to shield the public from intrusive forms of advertisement that inflict their messages on a captive audience" (1263).

Additionally, some states have raised cigarette taxes. For example, voters in California approved a ballot initiative in 1988 that increased

cigarette taxes specifically to support youthoriented public health programs (Novotny and Siegel 1996). In addition to the revenue it raises to educate about and treat smoking-related diseases, a higher tobacco tax also places cigarettes beyond the financial reach of many children and teenagers (Califano 1994).

In recent years, local governments across the nation have become more active in passing laws which restrict public smoking (Clearinghouse Update 1996). By 1995, more than 600 local jurisdictions had enacted smoking restrictions, and some 100 communities had banned the sale of cigarettes through vending machines (Kluger 1996, p. 689). In states such as California, antitobacco advocates claim that the tobacco lobby makes a conscious effort to oppose local smoking laws, often restrictive in nature, by replacing or preempting them with a "single, statewide and much-watered-down measure" (Kluger 1996, p. 705). For example, at least 30 state legislatures have passed laws since 1992 to prevent youth access to tobacco. Of these, 10 preempt more stringent laws on the local level (CDC 1995). Texas has two preemptive tobacco-related laws: no cities or counties can levy separate cigarette taxes, nor can they license tobacco retailers separate from the state (Antolik 1996).

In September 1996, the Texas Senate Committee on Health and Human Services released recommendations regarding minors' access to tobacco. These included: *non*-preemption by state legislation of local smoking ordinances; prohibition of minors' *possession* of tobacco; *licensing* of retailers and clerks who sell tobacco products and an associated *fee* that would be applied to enforcement and education of minors about tobacco use; and a ban on all outdoor *advertising* of tobacco products (Texas Senate 1996).

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